RAJASTHAN HIGH COURT
सत्यमेव जयते

HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

D.B. Civil Writ Petition No. 4728/2025

CNR: RJHC020265392025 | URN: CW / 11775U / 2025

Rajasthan High Court
सत्यमेव जयते
Web Copy - Not Official

M/s Astemo India Private Limited, Having Its Registered Office At Plot No. 663, Phase-5, Udyog Vihar, Gurugram, Haryana-122016, India Through Its Authorized Signatory Mr. Gopal Dutt Sharma

----Petitioner

Versus

1. Additional Commissioner (Ae), Office Of The Commissioner Of Central, Goods And Services Tax, Commissionerate Alwar (Adjudication Branch) A Block, Surya Nagar, Alwar (Rajasthan)- 301001
2. Additional Commissioner, Office Of The Commissioner Of Central Goods And Services Tax, Commissionerate Alwar (Adjudication Branch) A Block, Surya Nagar, Alwar (Rajasthan)- 301001
3. Union Of India, Ministry Of Finance (Department Of Revenue) Through Chief Secretary 3Rd Floor Jeevan Deep Building, Sansad Marg, New Delhi, Delhi 110001.
4. State Of Rajasthan, Through Principal Secretary, Department Of Finance, Secretariat, Jaipur

----Respondents

For Petitioner(s)	:	Mr. Surjit Ghosh, Sr. Adv. Assisted by Mr. Mannat Warich and Jaya Rishi Mr. Harshal Tholia with Ms. Vidhi Maheshwari Ms. Monika Paneri
For Respondent(s)	:	Mr. Vedant Agarwal Ms. Mahi Yadav, assisted by Ms. Chelsi Agarwal Mr. Sanjay Mehra with Ms. Sunita Mehla

HON'BLE MR. JUSTICE ARUN MONGA
HON'BLE MR. JUSTICE ASHUTOSH KUMAR

Judgment

Reserved on: 31/08/2026

Pronounced on: 04/11/2026

Per: Arun Monga, J.

1. The petitioner-company, inter alia, seeks to quash the show cause notice dated 15.01.2024 issued under Section 74 of the

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

Central Goods and Services Tax Act, 2017. Also assailed herein is the Order in Original dated 13.01.2025 passed pursuant to that notice.

2. By the impugned order in original, Respondent No. 2 has confirmed IGST of Rs. 11,19,39,126/- under the reverse charge mechanism. It has denied input tax credit of Rs. 5,23,25,805/-. It has imposed an equal penalty of Rs. 11,19,39,126/-. It has also directed payment of interest. The period in dispute is July 2017 to March 2023. The Department says that the secondment of Japanese expatriate employees by the overseas group company is an import of manpower supply service. The petitioner says these persons are its own employees. On its case there is no supply at all.

3. For convenience, we call the Central Goods and Services Tax Act, 2017 the CGST Act. The Rajasthan Goods and Services Tax Act, 2017 is the RGST Act. The Integrated Goods and Services Tax Act, 2017 is the IGST Act. The Central and State enactments are pari materia. A reference to one includes the other.

THE FACTS IN BRIEF

4. The petitioner is a private limited company at Alwar. It makes parts of motor vehicles. It is a subsidiary of Hitachi Astemo Limited, Japan, formerly Nissin Kogyo Co. Limited. We call the Japanese parent the Overseas Company.

5. The petitioner and the Overseas Company signed a Dispatch Agreement on 01.07.2007. It governs the secondment of

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

RAJASTHAN HIGH COURT सत्यमेव जयते

Japanese employees to India. On 01.04.2022 they signed a Memorandum for Secondment Cost Allocation. The petitioner says each seconded employee also signed a separate contract of employment with it. It cites two such contracts. One is with Mr. Hiroshi Kodama dated 01.07.2022. The other is with Mr. Nobuhiro Toju dated 31.01.2023.

Rajasthan High Court सत्यमेव जयते Web Copy - Not Official

6. The salary of each seconded employee has two parts. The Indian part is paid in rupees by the petitioner in India. The foreign part is paid in Japan by the Overseas Company. The Overseas Company then raises quarterly debit notes. The petitioner reimburses that amount. The petitioner says it deducts tax at source under Section 192 of the Income Tax Act, 1961 on the whole salary. It gives the illustration of Mr. Kodama. His gross salary was Rs. 54,45,951/-. The Indian part was Rs. 12,61,072/-. The foreign part was Rs. 19,50,079/-. The tax deducted was Rs. 16,39,000/-.

7. On 19.05.2022, Hon'ble the Supreme Court decided **Commissioner of Customs v. Northern Operating Systems Pvt. Ltd.**[1] It held that the secondment arrangement in that case was a taxable supply of manpower service.

8. The Department then began an enquiry against the petitioner. By letter dated 21.10.2022, department called for agreements, ledgers and details of reimbursements from the petitioner-company. The petitioner replied on 15.12.2022.

1 2022 SCC OnLine SC 658.

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

9. Meanwhile, petitioner generated self invoices dated 31.03.2023 and took input tax credit of the tax so paid. It says it has paid the disputed tax every month from April 2023, again under protest.

10. On 20.04.2023, the petitioner also deposited Rs. 6,00,66,553/- under Challan No. 23040800196954. It says this was paid under protest.

11. The petitioner filed replies on 01.05.2023 and 30.05.2023. Summons under Section 70 were issued on 11.09.2023. Documents were produced on 25.09.2023. On 16.10.2023 the petitioner gave a clarification on a gap in the Form 26AS figures.

12. The show cause notice dated 15.01.2024 then followed. It alleged that the arrangement was a supply of manpower service under Section 7(1) read with Schedule I. It said the arrangement could not be excluded under Schedule III, since no true employer and employee relationship existed with the petitioner. It alleged that the credit taken in April 2023 was barred by Section 16(4). It alleged suppression, since the import of service was not shown in the returns.

13. The petitioner replied on 13.02.2024. It filed further submissions on 11.10.2024 and 12.11.2024. There it relied on the second proviso to Rule 28 of the CGST Rules, 2017, Circular No. 210/4/2024 GST dated 26.06.2024 and the decision of the Delhi High Court in **Metal One Corporation India Pvt. Ltd. v. Union**

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

of India.[2] Respondent No. 2 passed the impugned order on 13.01.2025. It confirmed the entire demand.

SUBMISSIONS ON BEHALF OF THE PETITIONER

14. Mr. Surjit Ghosh, learned Senior Counsel assisted by Mr. Mannat Warich for the petitioner made a wide ranging attack. We set it out in the order in which it was argued.

(a) The notice and the order were both signed by the same officer, Mr. Naresh Kumar Saini. He was both accuser and judge. This offends the rule nemo judex in causa sua. Reliance was placed on Siemens Engineering and **Manufacturing Co. of India Ltd. v. Union of India**[3] and **Oryx Fisheries Pvt. Ltd. v. Union of India.**[4]

(b) The seconded employees are the petitioner's own employees. Their service is excluded by Entry 1 of Schedule III. The petitioner appoints them, pays them, controls them and integrates them in its business. The tests laid down in **Balwant Rai Saluja v. Air India Ltd.**,[5] **Sushilaben Indravadan Gandhi v. New India Assurance Co. Ltd.**[6] and Dharangadhara Chemical Works Ltd. v. State of Saurashtra[7] are met. The place or ratio of salary payment is no test. Since there is no supply, the Department has wrongly decided a jurisdictional fact.

2 2024 SCC OnLine Del 7499.
3 (1976) 2 SCC 981.
4 (2010) 13 SCC 427.
5 (2014) 9 SCC 407.
6 (2021) 7 SCC 151.
7 AIR 1957 SC 264.

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

Rajasthan High Court Web Copy - Not Official

Reliance was placed on **Raza Textiles Ltd. v. Income Tax Officer, Rampur,**[8] **Carona Ltd. v. Parvathy Swaminathan and Sons,**[9] **Arun Kumar v. Union of India**[10] and **Shrisht Dhawan v. Shaw Brothers.**[11]

(c) Northern Operating Systems turned on its own facts. There was no contract of employment with the Indian entity there. The whole salary was paid abroad. The employees kept a lien abroad. A judgment is an authority only for what it decides. **Padma Sundara Rao v. State of Tamil Nadu**[12] was cited. The impugned order copies passages from that judgment without applying its mind. **Union Public Service Commission v. Bibhu Prasad Sarangi**[13] was cited. The Central Board of Indirect Taxes and Customs has itself, by Instruction No. 05/2023 GST dated 13.12.2023, told its officers not to apply Northern Operating Systems mechanically.

(d) The Income Tax Department accepts the payment as salary under Section 192. The GST wing cannot take a contrary stand. Reliance was placed on **R.N. Gosain v. Yashpal Dhir**[14] and **Central Warehousing Corporation V. Adani Ports Special Economic Zone Ltd.**[15]

---

8 (1973) 1 SCC 633.
9 (2007) 8 SCC 559.
10 (2007) 1 SCC 732.
11 (1992) 1 SCC 534.
12 (2002) 3 SCC 533.
13 (2021) 4 SCC 516.
14 (1992) 4 SCC 683.
15 (2022) 15 SCC 110

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

Rajasthan High Court Web Copy - Not Official

(e) Section 74 could not be invoked. There was no fraud, wilful misstatement or suppression. The law before May 2022 favoured the petitioner. All documents were before the Department. Reliance was placed on **ITW Signode India Ltd. v. Collector of Central Excise,**[16] **Pushpam Pharmaceuticals Company v. Collector of Central Excise, Bombay,**[17] **Commissioner of Central Excise and Customs v. Reliance Industries Ltd.,**[18] **M/s Tata Steel Limited v. Union of India & Ors,**[19] **in M/s G.R. Infra Projects Limited, Ratlam v. State of Madhya Pradesh & Ors.**[20] and the decision of this Court in **M/s Gyankeer Tobacco Products Pvt Ltd v. Additional Commissioner, Central Excise and CGST Commissionerate** [21] Decisions of the Madras and Gujarat High Courts were also placed.

(f) In the alternative, the value of the supply is nil under the second proviso to Rule 28 and Circular No. 210/4/2024 GST. Reliance was placed on Metal One, in **Thales India Pvt. Ltd. v. Additional Commissioner of CGST** [22] and the decision of the Karnataka High Court in **Alstom Transport India Ltd.**[23] The issue is also revenue

16 (2004) 3 SCC 48.
17 1995 Supp (3) SCC 462.
18 2023 SCC OnLine SC 767
19 2026 INSC 920
20 Civil Appeal No. 11277 of 2026
21 D.B. Civil Writ Petition No. 18915/2024
22 2025 (2) TMI 245
23 W.P. No. 1779 of 2025.

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

RAJASTHAN HIGH COURT सत्यमेव जयते

neutral. Commissioner of **Central Excise and Customs v. Narmada Chematur Pharmaceuticals**[24] was cited.

(g) The credit of Rs. 5,23,25,805/- was within time under Section 16(4) read with Section 31(3)(f) and Circular No. 211/05/2024 GST. The annual return for 2022 to 2023 was filed on 30.12.2023.

Rajasthan High Court Web Copy - Not Official सत्यमेव जयते

(h) No intimation in Form GST DRC 01A was issued under Rule 142(1A). **New Morning Star Travels v.s Deputy Commissioner** [25] was cited.

(i) The appeal under Section 107 is futile. The appellate authority will follow Northern Operating Systems mechanically. Reliance, inter alia, was placed on **Filterco v. Commissioner of Sales Tax, Madhya Pradesh**[26] and **Onkar Lal Nandlal v. State of Rajasthan.**[27]

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

15. The respondents raise a preliminary objection to maintainability. The petitioner has a full statutory remedy of appeal under Section 107 and a further appeal under Section 112. No exceptional circumstance exists. Every ground raised calls for an appreciation of the record. A writ court does not sit in appeal over findings of fact.

---

24 (2005) 10 SCC 123

25 (2023) 156 taxmann.com 427 (Andhra Pradesh)

26 (1986) 2 SCC 103.

27 (1985) 4 SCC 404.

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

16. Reliance was, inter alia, placed on **Whirlpool, Commissioner of Income Tax v. Chhabil Dass Agrawal,**[28] **Radha Krishan Industries v. State of Himachal Pradesh**[29] and **Syed Yakoob v. K.S. Radhakrishnan.**[30]

17. We have heard learned counsel at length. We have gone through the pleadings, the written submissions and the compilations.

THE QUESTIONS FOR DETERMINATION

18. Question that arises is whether dispute turns on facts that the parties contest? If it does, can a writ court resolve those facts on affidavits?

DISCUSSION AND ANALYSIS

19. No doubt, the power under Article 226 is wide. An alternate remedy does not take it away. But the power is discretionary. Courts have long restrained themselves where the statute gives an effective remedy.

20. A Constitution Bench of Hon'ble Supreme Court laid down this rule in **Thansingh Nathmal v. Superintendent of Taxes, Dhubri.**[31] The High Court should not, in a writ, decide questions of fact that the statutory authorities are competent to decide. A party should not be allowed to bypass the machinery created by a taxing statute. In **Titaghur Paper Mills Co. Ltd. v. State of Orissa,**[32] the Supreme Court held that where a statute creates a

28 (2014) 1 SCC 603.
29 (2021) 6 SCC 771.
30 AIR 1964 SC 477.
31 AIR 1964 SC 1419.
32 (1983) 2 SCC 433.

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

right or liability and also gives a special remedy, that remedy must be availed.

21. At the same time, Hon'ble the Supreme Court has described fiscal statutes with their own machinery of adjudication and appeal as self contained codes. In **Union of India v. Guwahati Carbon Ltd.,**[33] it said so of the Central Excise Act. It held that the statutory route must be followed. The CGST Act is a statute of the same kind. It provides for adjudication, first appeal, appeal to a Tribunal and then appeal on law. We may like to say more about this scheme below in the succeeding part.

22. Whirlpool recognised four exceptions. A writ may lie despite an alternate remedy for enforcing a fundamental right, for a breach of natural justice, against an order wholly without jurisdiction, or to challenge the vires of a statute. These are exceptions. They are not a licence. A party must show that its case truly falls within one of them. It is not enough to give a ground of appeal the name of an exception.

23. There are sound reasons why the rule of undertaking the journey of statutory self contained adjudicating process should ordinarily be not short circuited. The same is applied more strictly in tax cases. We set them out, because they explain why the exceptions are kept narrow.

24. First, the statutory authorities deal with these questions every day. They know the returns, the forms and the accounting entries. They are better placed to read a payroll or a debit note

33 (2012) 11 SCC 651.

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

Rajasthan High Court Web Copy - Not Official

than a writ court is. Second, the hierarchy produces a full record of findings. When a question of law finally reaches this Court under Section 117, it comes with the facts already found. The Court then decides law on a settled factual base. Third, the statute strikes a deliberate balance between the taxpayer and the revenue. An appeal under Section 107 requires a pre deposit of the admitted amount and a part of the disputed tax. Once that is paid, recovery of the balance stands stayed. A writ petition entertained as a matter of course would let a taxpayer step around that balance. Fourth, if every disputed demand could come straight to this Court, the specialised forums would stand idle. This Court would become a court of first instance on facts.

25. We may also add here that none of this means that a writ can never lie in a tax matter. But, all it means that the taxpayer must bring a real exception. A dressed up ground of appeal will not do.

26. A writ petition is decided on affidavits. There is no trial. Witnesses are not examined. Documents are not proved in the ordinary way. Each side swears to its own version. For that reason the writ court does not ordinarily embark on resolving seriously disputed facts.

27. Both sides rely on **Northern Operating Systems**[34]. It is therefore useful to see what kind of enquiry that judgment calls for. We do so only to understand the method so as to figure out if it can be applied.

34 2022 SCC OnLine SC 658

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

28. Hon'ble the Supreme Court was dealing with employees seconded by overseas group companies to an Indian company. It did not decide the case on the label the parties had used. It looked at the substance of the arrangement. It asked who, in reality, was the employer. It read the agreements as a whole. It looked at who selected the employees, who paid them, who bore the cost in the end and on whose rolls they remained for social security and retirement benefits. On that cumulative reading, it held that the overseas companies had supplied manpower to the Indian company.

29. What is relevant thus is the methodology adopted for deployment of human resource. The answer in each case depends on the whole arrangement, read with the actual conduct of the parties. A single clause or a single contract does not decide it. That tells us that the deployment by way of secondment is, in every case, a mixed question rooted in facts.

30. Adverting now to the facts in hand, it is borne out that the petition is built on one central assertion. The seconded employees are the petitioner's own employees. Everything else flows from it. The Department's case rests on the opposite assertion. The employees remain the employees of the Overseas Company, which supplies their services to the petitioner. Each side reads the same documents to support its own version. For brevity and convenience, the main points of conflict, as they appear from the petition and from the impugned order, have been tabulated as below:

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

Rajasthan High Court Web Copy - Not Official

Point in issue	***Petitioner's version***	***Department's version, as found in the notice and the order***
Who is the employer	*Each seconded employee signed a separate contract of employment with the petitioner. The petitioner is the real employer.*	*No true employer and employee relationship exists with the petitioner. The employees remain on the payroll of the Overseas Company.*
Who bears the salary	*Clauses 2(a) to 2(c) of the Memorandum of 01.04.2022 show that the petitioner alone bears the salary. The foreign part is only paid abroad for convenience and reimbursed.*	*The Overseas Company pays the foreign part in Japan and recovers it through quarterly debit notes. That recovery is consideration for a service.*
Who controls the work	*Clauses 2(h), 4 and 5(f) of the Memorandum give the petitioner exclusive control.*	*The Overseas Company retains partial control over the employees.*
Lien and continuity of service	*The facts in Northern Operating Systems are different. The employees are integrated in the petitioner's business.*	*The employees retain a lien with the Overseas Company.*
Documents for July 2017 to March 2022	*The Dispatch Agreement of 2007 governs. The petitioner relies on contracts of July 2022 and January 2023.*	*The arrangement throughout was a supply of manpower by the Overseas Company.*
Income tax treatment	*Tax is deducted at source under Section 192 on the whole salary. This shows the payment is salary.*	*A gap in the Form 26AS figures had to be explained on 16.10.2023. Treatment under the Income Tax Act does not decide supply under the CGST Act.*
Payment of Rs. 6,00,66,553/- and monthly payments	*Paid under protest only.*	*The challan does not show any protest.*
Suppression	*There was nothing to declare, since there was no supply. Everything was disclosed when asked.*	*The import of service was not shown in GSTR 1 and GSTR 3B.*
Self invoices of 31.03.2023	*Raised only to pay tax under protest. They are not invoices for Rule 28 and Circular No. 210/4/2024 GST.*	*Invoices were issued, so the nil value under the circular is not available.*

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

Credit and Section 16(4)	*Credit was within time, read with Section 31(3)(f) and Circular No. 211/05/2024 GST.*	*Credit taken in April 2023 was barred by time.*

Rajasthan High Court Web Copy - Not Official

31. Aforesaid tabulated differences cannot possibly be termed as mere differences of legal opinion. They are differences about what happened, what the documents say and how the parties actually behaved over nearly six years. We take them one at a time. We do so only to see whether they are genuinely disputed. We do not resolve them.

32. First, the employer. The petitioner relies on two individual contracts. One is of July 2022. The other is of January 2023. The demand begins in July 2017. Nothing in the pleadings tells us on what terms each employee worked in the earlier years. Nor do we know how many employees were seconded in the period, or whether each of them signed a similar contract. The Memorandum is itself dated 01.04.2022. So for almost five of the six years in dispute, the very document on which the petitioner's case rests did not exist. What governed those years is a pure question of fact. It cannot be answered by an affidavit that speaks of two contracts in 2022 and 2023.

33. Second, who bears the salary. The petitioner reads Clauses 2(a) to 2(c) of the Memorandum to mean that it alone bears the cost. The Department finds that the employees remain on the payroll of the Overseas Company. Both views are possible on a bare reading of extracts. The answer lies in the payroll records, the debit notes, the bank remittances and the books of both

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

companies. Who in fact paid, how much, when and under what head, is a matter of evidence. It is not a matter of interpretation alone.

34. Third, control. Here too the petitioner points to Clauses 2(h), 4 and 5(f). The order finds that the Overseas Company retains partial control. Practical questions thus are; who appointed the employee? Who could recall or dismiss him? Who fixed his duties and assessed his work? Who granted leave? Was he integrated in the business of the Indian entity? A contract clause gives one part of the answer. The actual practice of the parties gives the rest. Labels in a contract do not settle the true nature of the relationship. As already noted, that exercise needs the full record. It cannot be done on extracts annexed to a writ petition.

35. Fourth, lien and continuity of service. The petitioner says that the employees here have kept no lien abroad. Whereas, the impugned order finds that the employees here also retain a lien with the Overseas Company. Whether they do is a question of fact. It depends on the service records, the terms of return to Japan and how seniority and benefits were treated.

36. Fifth, income tax. The petitioner says tax was deducted under Section 192 on the whole salary. Yet it had to explain a gap in the Form 26AS figures on 16.10.2023. The existence of that gap, and the adequacy of the explanation, are themselves matters of fact. They bear on the very claim that the entire payment was treated as salary.

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

Rajasthan High Court Web Copy - Not Official

37. Sixth, the petitioner's own conduct. It paid Rs. 6,00,66,553/- in April 2023. It raised self invoices. It took credit. It has paid every month since. It says all this was under protest. The Department says the challan shows no protest. Whether the payment was under protest, and what weight that conduct carries, can only be decided on the record. We express no view either way. We note it only to show that the dispute cannot be resolved on disputed facts.

38. Seventh, the remaining grounds also depend on facts. Whether there was suppression depends on what was disclosed, when and to whom. Whether the self invoices are invoices for the purpose of Rule 28 depends on why and how they were raised. Whether the credit was within time depends on the dates of the invoices, the periods they relate to and the date of the annual return. Whether the absence of Form GST DRC 01A caused any prejudice depends on the stage of the proceedings and on the replies the petitioner in fact filed.

39. The petitioner asks us to accept its reading of these documents and hold that there is no supply. That reading comes to us through its own affidavit. An affidavit filed by a party in support of its own case is, by its nature, self serving. It tells us what the deponent says the documents mean. It does not prove that they mean it. The Department's version, on the other hand, is recorded in a reasoned order passed after notice, replies and hearing. If we were to prefer the petitioner's affidavit to that order, we would be reappreciating evidence, which we would

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

rather refrain in exercise of extraordinary writ jurisdiction and best leave it to the competent authorities of the revenue. This is not a task for a writ court sitting on affidavits and extracts. It is the ordinary work of a fact finding authority.

Rajasthan High Court Web Copy - Not Official

40. The statute gives the competent statutory authorities the tools for this work. Under Section 70, the proper officer may summon any person to give evidence and produce documents. Such proceedings are deemed to be judicial proceedings. The appellate authority under Section 107(11) may make such further inquiry as may be necessary. It may then confirm, modify or annul the order. It cannot remand the case to the adjudicating authority. So it must find the facts itself and decide.

41. Rule 112 of the CGST Rules permits additional evidence before the appellate authority in the cases it specifies. The authorities can call for the full payroll, examine the officers of both companies and test each document. A writ court has none of these practical advantages. It would have to decide on whatever each side chose to annex.

42. It follows that the dispute cannot be resolved here without taking evidence and weighing it. That is the work of the competent authority. It must look at the material on record and return its own findings of fact. If the petitioner remains aggrieved by those findings, the statute gives it a further remedy.

43. Furthermore, the CGST Act provides a complete hierarchy for disputes of this kind. We set it out to show that the petitioner’s remedy is real, layered and effective and equally efficacious.

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

Rajasthan High Court Web Copy - Not Official

(i) Sections 73 and 74 provide for notice, reply, hearing and determination by the proper officer.

(ii) Section 107 provides a first appeal to the appellate authority. Under Section 107(6), the appellant must pay the admitted amount and a part of the disputed tax as pre deposit. On such payment, recovery of the balance stands stayed by force of Section 107(7). Under Section 107(11), the appellate authority may confirm, modify or annul the order after further inquiry. Under Section 107(12), it must state the points for determination, the decision and the reasons.

(iii) Section 112 provides a further appeal to the Goods and Services Tax Appellate Tribunal. The Tribunal is the final forum on facts. It is a specialised body with judicial and technical members.

(iv) Section 117 provides an appeal to the High Court from an order of a State Bench of the Tribunal, where the case involves a substantial question of law. Section 118 provides an appeal to the Supreme Court from orders of the National or Regional Benches.

(v) Section 75(2) provides that where an appellate authority, Tribunal or court finds that the charge of fraud, wilful misstatement or suppression is not established, the tax shall be determined as if the notice had been issued under Section 73.

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

Rajasthan High Court Web Copy - Not Official

44. This scheme reflects a clear legislative choice. Facts are to be found by the adjudicating authority, the appellate authority and the Tribunal. The High Court comes in at the end, and only on a substantial question of law. If we entertain this petition and decide the facts ourselves, we would turn that scheme upside down. The High Court would become the first forum on facts. The appellate authority and the Tribunal would be bypassed altogether.

45. The scheme is also fair to the taxpayer. The pre deposit is a fraction of the disputed tax. Once it is paid, the balance cannot be recovered while the appeal is pending. The petitioner has already deposited Rs. 6,00,66,553/-. It is not left without protection if it goes to appeal. Indeed, it is better protected there, since the statute itself stays recovery. A writ petition offers no such automatic protection.

46. Moving on to the assertion as to whether there is a breach of natural justice because the same officer issued the notice and passed the order. This is the ground pressed most strongly to bring the case within Whirlpool. We cannot accept it.

47. Section 74(1) empowers the proper officer to serve the show cause notice. Section 74(9) directs the proper officer to consider the representation and determine the tax, interest and penalty. The statute itself places both functions on the proper officer. This is the design of the law. It is not a lapse by the officer.

48. The rule against bias strikes at personal interest or a real likelihood of prejudgment. No personal interest is alleged against the officer. No malice is alleged. The only complaint is that he

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

issued the notice and then decided it. Where the statute itself authorises the same authority to do both, that alone is not bias. If it were, every adjudication under Sections 73 and 74 would fall. The petitioner has not challenged the vires of these provisions.

49. There is also a difference between a tentative view and a closed mind. An officer who issues a notice forms only a prima facie view. The notice says so in its very name. It calls upon the noticee to show cause. Forming such a view is not prejudgment. It is what the statute requires before any person is called upon to answer. The question is whether the officer kept his mind open to the reply. That is tested by reading the final order, which is exactly what an appellate authority does.

50. The petitioner was heard. It filed replies on 01.05.2023 and 13.02.2024. It filed further submissions on 11.10.2024 and 12.11.2024. The petitioner itself says that the order reproduces its submissions. Its real grievance is that the officer did not accept them, or did not deal with them well enough. That is a complaint about the quality of reasoning. It is a ground of appeal. It is not a denial of hearing.

51. The fear that the appellate authority will not apply its mind is speculative. A writ court cannot assume that a statutory authority will act unlawfully. The appeal under Section 107 is not an appeal from Caesar to Caesar’s wife. It lies to a separate authority. That authority must give reasons under Section 107(12). Its order is open to a further appeal before the Tribunal under Section 112. A substantial question of law can then come to this Court under

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

Section 117. If the appellate authority were to decide mechanically, the remedy lies within that very hierarchy. The hierarchy is complete and effective.

52. As an upshot, though we decline to entertain the petition, but the time spent in this Court ought not to be counted against petitioner when it goes to appeal.

53. The petitioner has also deposited Rs. 6,00,66,553/- in April 2023 and has paid the disputed tax every month since. Whether those amounts can be adjusted towards the pre deposit is a matter for the appellate authority and same is left open.

CONCLUSION

54. We make it clear that we have not expressed any opinion on the merits. We have referred to the rival versions only to show that they are disputed. Our observations are only for deciding whether the writ petition should be entertained. They shall not influence the appellate authority.

55. The writ petition is dismissed on the ground of availability of an efficacious alternate remedy. To ensure that the petitioner is not prejudiced, we issue the following directions.

(a) The petitioner may file an appeal under Section 107 of the CGST Act and the RGST Act against the Order in Original dated 13.01.2025 within thirty days from the order being uploaded on website of this Court.

(b) If the appeal is filed within that time, the appellate authority shall not reject it on the ground of limitation. It

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)

shall decide it on merits. The time spent in this writ petition, from the date of its filing till today, shall stand excluded.

(c) No coercive step shall be taken to recover the impugned demand for thirty days granted to file appeal.

56. Pending applications, if any, stand disposed of. There shall be no order as to costs.

(ASHUTOSH KUMAR),J **(ARUN MONGA),J**

K.P. Singh Dewasi

Rajasthan High Court Web Copy - Not Official
सत्यमेव जयते

(Uploaded on 05/11/2026 at 07:12:33 PM)
(Downloaded on 10/11/2026 at 12:21:21 PM)